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Honorable Sam J. Ervin, Jr., Chairman  
Senate Committee on Government Operations  
United States Senate  
Washington, D. C. 20510

Dear Chairman Ervin:

This is in reply to your letter dated 11 May 1973, requesting our views concerning S. 1726, which establishes guidelines and limitations for the classification of information and the disclosure of such information to the Congress and the public.

S. 1726 establishes a statutory program for the classification, declassification, and protection of Government information by amending the Freedom of Information Act. All classified information, including intelligence sources and methods, would be affected. The only exception is Atomic Energy Restricted Data which, under Section 105, is expressly excluded from the provisions of the bill.

The Central Intelligence Agency clearly recognizes that all elements of our Government and the electorate must be adequately informed on matters of national importance. Indeed, the CIA was created to fill a critical information void and we have strived to meet our obligations within existing law and established procedures.

However, there are certain considerations

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that must be borne in mind. The role of CIA is to provide foreign intelligence support to the President and the National Security Council by assuring a coordinated effective collection and analysis program of foreign intelligence in Government for timely dissemination to the policy makers. The success of the program is dependent upon productive sources and effective methods of collection and analysis which meet national requirements. If security is not properly regarded and sources and methods are revealed, the foreign intelligence collection effort would be critically affected.

This was recognized by the Congress in the National Security Act of 1947, as amended, (50 U.S.C.A. 403), Section 102(d)(3), which provides as follows:

"... And provided further, That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure."

The Agency, under the present Freedom of Information Act, has established a program to handle outside requests for information. Disclosures under the Act, however, have admittedly been extremely limited because of the necessity to protect intelligence sources and methods and other considerations affecting Agency operations. The passage of time alone for declassification does not provide adequate protection. Each item must be carefully reviewed. Disclosures of information revealing past activities can well jeopardize present and future operations

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and individuals. This review, therefore, is extensive and includes all related and corollary information affected by the disclosure.

The existing Freedom of Information Act provides protection to intelligence sources and methods by expressly exempting classified information from requests for declassification. We question whether S. 1726, by establishing a much broadened extensive program of declassification and dissemination, accomplishes these ends consistent with the protection of the information involved.

Section 104 provides for the automatic declassification of information unless the President or agency head personally justifies, in writing, that the information requires continued protection. The justification is not delegable and must be submitted to the Comptroller General and to the Government Operations Committees of House and Senate for review by any member or committee of Congress. No classified information may be withheld from any member or committee of Congress. Any person may bring court action and require a court review de novo of the sufficiency of the classification of any material deferred from declassification. Noncompliance with a court order subjects an agency head to contempt.

The above provisions in Section 104 clearly conflict with the statutory responsibility of the Director of Central Intelligence to protect intelligence sources and methods and raise our strong objection to

S. 1726. The Director could be faced with a court order to declassify

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intelligence overriding his determination that disclosure would reveal sources and methods. Regardless of the outcome of the court action, sensitive information would be disclosed in open court. Also, anyone can petition court action to force disclosure of any classified information without showing any interest; whereas, the Government is forced to prove a national interest to protect the information involved.

There are other provisions in Section 104 of S.1726 which also raise serious problems for this Agency. The more significant are:

- a. The authority granted to the Comptroller General to oversee the protection of information in Government; investigate allegations of improper classification; and inspect Agency classification programs can conflict with the Director's statutory responsibilities.
- b. It is impossible for the Director to review personally the countless hundreds of thousands of documents spanning a period of twenty-five years for purposes of declassification; however, the review is vital and cannot be waived.
- c. The requirement to furnish quarterly to the Comptroller General and upon request to any member or committee of Congress the names and addresses of all persons who have authority to classify information is in conflict with Section 6 of the Central Intelligence Agency Act of 1949

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(50 U.S.C.A. 403g) which exempts the Agency from the provisions of any law requiring the disclosure of the names of any of its employees.

d. The one designation "Secret Defense Data" by not recognizing any varying degrees of sensitivity will not provide adequate protection to the most sensitive information.

A clearly recognized and understood classification such as "Top Secret" not only provides ready identification but assures proper protective handling.

For the above reasons, this Agency strongly opposes enactment of S. 1726. We offer no comments on other sections of the bill except to note that Title V - COMMUNICATIONS MEDIA PRIVILEGE would protect the identity of all persons furnishing any information to the media, including the foreign press, regardless of any indications of criminality in the acquisition of the information involved.

The Office of Management and Budget advises there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

W. E. Colby  
Director

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Remarks:

For your final coordination prior to submission to the Director for forwarding to OMB. Submission of your comments by 15 February would be appreciated.

Assistant Legislative Counsel

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